

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FLORENCE MUSSAT, M.D., S.C.,	)	
individually and on behalf	)	16-cv-2881
of similarly situated persons,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
XESS BRAND PRODUCTS, INC., and	)	
ELITE BRAND INDUSTRIES, INC., d/b/a	)	
ELITE COMPRESSION GARMENTS	)	Trial By Jury Demanded
	)	
Defendants.	)	

**COMPLAINT - CLASS ACTION**

1. Plaintiff Florence Mussat, M.D., S.C., brings this action individually and on behalf of similarly situated persons to secure monetary and injunctive redress for the illegal actions of Defendants Xcess Brand Products, Inc., and Elite Brand Industries, Inc., faxing or causing to be faxed an unsolicited advertisement. A copy of the unsolicited advertisement is attached hereto as Exhibit A, (the “subject fax”).

2. This Court has jurisdiction under 28 U.S.C. § 1331 (Federal Question) and 47 U.S.C. § 227 (“TCPA”). *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005). The Court has supplemental jurisdiction under 28 U.S.C. § 1367(a).

3. Venue and personal jurisdiction in this District are proper because the act complained of was targeted to an individual in Illinois by the transmission of the subject fax to Plaintiff.

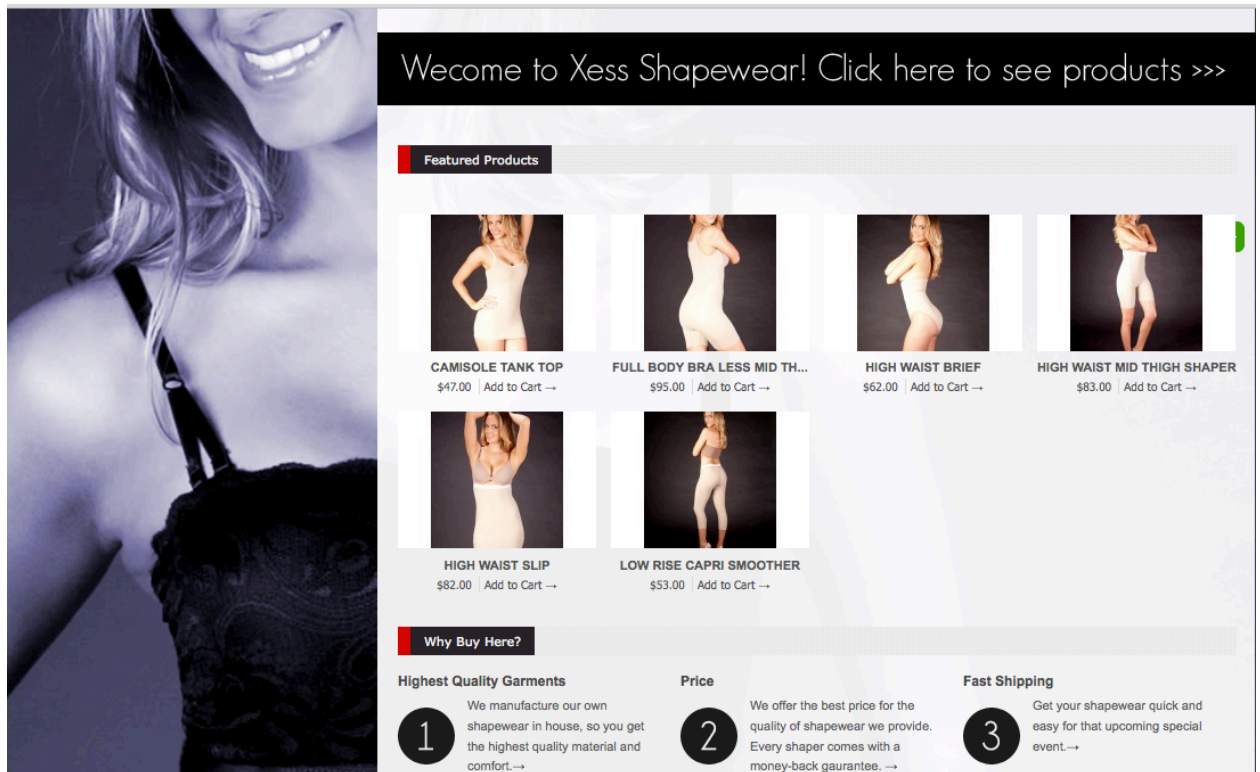
4. Plaintiff received the subject fax on its facsimile machine.

5. Defendants are responsible for causing to be sent and/or the sending of the subject fax.

6. The subject fax instructs the recipient to go to Xess' website or to visit Elite's website, and 323-584-8600 is Elite's fax number.

7. The subject form fax is an advertisement regarding good offered for sale.

8. Xess' website is consistent with the products being offered in the advertisement:



[www.xesshaper.com](http://www.xesshaper.com)

9. Plaintiff had no prior relationship with Defendants and had not authorized the sending of the subject fax.

10. The TCPA makes unlawful the "use of any telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine . . . ." 47 U.S.C. §227(b)(1)(C).

11. The subject fax does not contain a compliant opt-out notice as required by the TCPA.

12. Unsolicited fax advertising is contrary to Illinois public policy, as set forth in 720 ILCS 5/26-3(b), which makes it a petty offense to transmit unsolicited fax advertisements to Illinois residents.

13. Plaintiff's and each class member's right of privacy was invaded, costs of toner and ink were incurred, or time to review and delete the subject form faxes were expended.

WHEREFORE, Plaintiff requests that this Honorable Court:

- a. Certify that this matter may proceed as a class action;
- b. Enter judgment in favor of Plaintiff and the class and against Defendants for damages, including damages allowed under the TCPA;
- c. Enter judgment in favor of Plaintiff and the class and against Defendants for Injunctive relief;
- d. Enter a judgment declaring that Defendants' fax to Plaintiff was unsolicited;
- e. Enter a determination that Plaintiff is an adequate class representative;
- f. Award Plaintiff a fair, reasonable and adequate incentive award for being the named Plaintiff; and
- g. Costs of suit, including an award of attorney's fees if permissible.

Respectfully submitted,

s/ Curtis C. Warner  
Curtis C. Warner

Curtis C. Warner  
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**TRIAL BY JURY DEMANDED**

PLEASE TAKE NOTICE that Plaintiff demands a trial by jury.

Respectfully submitted,

s/ Curtis C. Warner  
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# **EXHIBIT A**

**ELITE COMPRESSION GARMENT™****BUY AMERICAN****SAVE JOBS****E 75****LOW CUT TUMMY TUCK GIRDLE W/ZIPPER**HOOK & EYE W/ZIPPER CLOSURE  
IDEAL FOR TUMMY TUCK

REG. \$ 37.00

**SPECIAL \$ 32.90**

\* AVAILABLE IN SIZES: XS, SM, MD, LG, XL, 2XL

**E 750****LITE N COOL BREAST STABILIZING BAND**MADE OF 3.5" SOFT & BREATHABLE  
ELASTIC, VELCRO CLOSURE

REGULAR \$ 108.00 PER BOX

**SPECIAL \$ 95.50****12 PER BOX****E200 HIGH WAIST GIRDLE W/ZIPPER BELOW KNEE  
ULTRA SOFT - HIGH COMPRESSION GRIDLE**HOOK & EYE W/ZIPPER  
REINFORCED TUMMY PANEL  
OPEN CROTCH**SPECIAL \$44.95**

SIZES: XS, SM, MD, LG, XL

CALL US TODAY @ 888-633-8606 AND START SAVING ON ALL YOUR  
COMPRESSION GARMENT PURCHASES OR VISIT US @  
[WWW.ELITEBRANDIND.COM](http://WWW.ELITEBRANDIND.COM).**WE ACCEPT ALL  
MAJOR CREDIT CARDS**THE ABOVE SPECIAL PRICING IS GOOD THRU APRIL, 30 2012  
CALL 888-633-8606 FOR OUR LATEST ELITE™ COMPRESSION GARMENT CATALOGUE.  
WE NOW HAVE 2<sup>ND</sup> STAGE SHAPERS, PLEASE VISIT OUR  
WEBSITE @ [WWW.XESSHAPER.COM](http://WWW.XESSHAPER.COM)**SPRING SPECIAL**